

**MINUTES  
REGULAR MEETING  
RETIREMENT BOARD OF TRUSTEES  
EMPLOYEES' RETIREMENT SYSTEM OF THE CITY OF BATON ROUGE  
AND PARISH OF EAST BATON ROUGE  
OCTOBER 29, 2020**

The regular meeting of the Retirement Board of Trustees was held in the Metropolitan Council Chambers at 222 St. Louis Street, due to social distancing requirements, and was called to order at 10:01 a.m. by Board Chairman Ms. Marsha Hanlon. Members present: Mr. Joseph Toups, Mr. Brian Bernard, Mr. Mark LeBlanc, Mr. David West, Sgt. Neal Noel, and Mr. Britt Hines. Absent: None. Staff present: Mr. Jeffrey Yates, Mr. Russell Smith, Mr. Mark Williams, and Ms. Salli Withers. Others present: Ms. Denise Akers – legal counsel, Mr. Timothy Herring – disability retirement applicant, Mr. Shane Spillman and Mr. Charleston O'Connor – BRFD.

Mr. Smith formally called the roll.

The chairman began by introducing Item 1, Reading and Approval of Minutes, and noted that there were minutes being considered for approval from the regular meeting of September 24, 2020, from the Investment Committee meeting of October 15, 2020, and from the Election Committee meeting of September 24, 2020, and called for a motion.

**Motion by Mr. LeBlanc, seconded by Mr. West to suspend the reading of, and approve the minutes of the regular meeting of September 24, 2020, the Investment Committee meeting of October 15, 2020, and the Election Committee meeting of September 24, 2020 as presented.**

**No discussion and no objections.**

**Motion passed by those members present.**

Under Item 2, Disability, there was one application for disability retirement as follows:

Mr. Timothy Herring	Regular	Service-Connected
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Mr. Bernard asked someone to explain the nuances of this disability. Ms. Akers advised that any discussion of medical issues would need to be done in executive session, although Mr. Herring, who was present, could allow the discussion in open session. Mr. Herring agreed that the discussion could be held in open session. Mr. Bernard asked how this matter came to be a service-connected disability application when the Workers' Compensation (WC) and City physician had opined that Mr. Herring was able to return to work. He also asked how this case went from a regular retirement to a service-connected disability. Mr. Yates stated that the Retirement Board's medical consultant responded to the application for service-connected disability and took into account Mr. Herring's age, as well as job duties required that were not included in the job description. Mr. Herring informed Dr. Scimeca that under his job duties, he would be required to occasionally lift manhole covers, which was the cause of his disabling injury. As a follow-up, Human Resources had assisted with getting a supervisor from DPW to confirm that employees in Mr. Herring's position would occasionally be required to lift manhole covers and descend into the manholes. Mr. Yates stated that Dr. Scimeca was aware of the opinions of the other physician, but he assessed the disability independently, and with the job duties that would be required in mind, rather than the written job description. In answer to a question from Mr. Bernard, Mr. Yates stated that Dr. Scimeca was not overruling the other physician, but giving an independent assessment of this case. He confirmed that Dr. Scimeca did not physically examine Mr. Herring because he had more than enough written records to make his determination. Regarding how the service-connected disability application was initiated, Ms. Salli Withers stated that all of Mr. Herring's options were presented to him, just as they are to all members. In answer to another question from Mr. Bernard, Ms. Withers stated that not all members are presented information on disability retirement, but that Mr. Herring had been on WC for some time, and that was the reason for discussing possible disability retirement. The chairman asked legal counsel her opinion when the Board's physician's opinion differs from that of a City physician. Mr. Akers stated that the Board's physician must state whether or not the applicant is totally and permanently disabled from the course of his normal duties, and that the Board "shall" approve the application, based on the physician's recommendation in accordance with the Retirement Ordinances. She went on to summarize the provision of City-Parish Ordinance 1:470, which allows the member to be removed from disability provided another job position, for which the member qualifies, can be offered at the same or higher level of pay. Ms. Akers stated that if another position was offered to the applicant, the Board's physician would need to review the duties of that position to determine whether or not the applicant was capable of performing those duties. She stated that the general rule for pension system disabilities is that in order for the physician to state that a member is not disabled from their job, an in-person examination would be required, but that to state that the member is disabled, if the physician has ample medical records, his opinion can be rendered without an in-person examination. Mr. Bernard stated that HR did not pursue finding another position for Mr. Herring because the WC and City physicians had stated he was able to return to work. Mr. Yates stated that he had read the job description for Mr. Herring's position and that it appeared to be a sedentary job, but that in reality it did require occasional heavy lifting. He further stated that should Mr. Herring be offered another job position, there might still be the issue of pain management that has been ongoing for some time. Mr. Bernard noted that HR funds and resources were used to solicit physicians' opinions only to be overruled.

by the physician for the Retirement Office. He asked why the member could not just go directly to the Retirement Board's physician in order to avoid the futile exercise of screening the member through the WC and City physicians. Ms. Akers noted that it appeared the WC and City physician evaluated Mr. Herring's ability on the written job description, and the Retirement Board's physician incorporated the actual duties required for the position. Mr. Bernard stated that the WC physician had a Functional Capacity Exam (FCE) performed for Mr. Herring, and that the return to work order was given partially based on the results of that exam. Ms. Akers suggested that the FCE was performed based on the written job description which did not include heavy lifting, which was the activity that spawned the disabling injury. Mr. Toups pointed out that Dr. Scimeca had not reviewed the FCE, with Mr. Yates reading a portion of Dr. Scimeca's letter showing that the FCE did not test the heavy lifting requirement. Ms. Akers again stated that this case entailed a discrepancy between physicians of what the applicant's job duties were. At Ms. Akers' request, the staff outlined the disability application process, including the process of determining whether or not another job is available. Mr. Williams explained the process, and what falls within the purview of HR versus the Retirement Office. He noted that conforming to Sec. 1:470 was done for every disability applicant prior to referring the member to the Retirement Board physician. Ms. Akers stated that the Board could send the matter back to HR for them to determine whether or not there was a job available that Mr. Herring could perform, but that the disability application before the Board should be passed, in accordance with the ordinances, and the disability pension could be stopped if another job becomes available and is offered to Mr. Herring. Discussion continued regarding changing or making special provisions to the job duties to eliminate the requirement for heavy lifting. Mr. Bernard read a portion of the letter from Mr. Adam Smith of DPW, in which he states that Mr. Herring's job classification did not require lifting manhole covers, but that in the field, they may be asked on occasion to do so. Sgt. Noel inquired about the liability to the Board for not approving a disability retirement that was being recommended by the Board Physician for disability retirement, with Ms. Akers stating that the language of the ordinances was clear that the Board shall follow its physician's recommendation. Discussion continued regarding reasonable accommodation for the current position that could possibly be approved by Dr. Scimeca thus triggering a job offer by HR and discontinuing the disability retirement.

**Motion by Mr. LeBlanc, seconded by Sgt. Noel to approve the service-connected disability retirement application of Mr. Timothy Herring based on the recommendation of the Board's medical consultant.**

**Under discussion Mr. Bernard asked about the process of disability retirement and asked about who is offered disability retirement, including members coming off of WC. Mr. Yates and Mr. Williams explained the process, and noted that in almost all cases the disability retirement results in a smaller benefit than a service allowance retirement and may carry other disadvantages such as no survivor benefit. Mr. Toups asked about deferring the item, with Ms. Akers responding that the Board shall approve the disability in the event the Board physician declares that the member is totally and permanently disabled. It was noted that Mr. Herring's service allowance benefit would be lower than a service-connected disability mainly because he had a significant number of years transferred from another retirement system with a lower factor than that of CPERS.**

**There were no objections to the motion.**

**Motion passed by those members present with the exception of Mr. Bernard and Ms. Hanlon who abstained.**

The next item on the agenda was Item 3, Benefits Report, and the chairman called on Mr. Yates to present the report. Mr. Yates stated that the report included Mr. Herring's disability retirement, and that there was nothing unique that needed mention on the report, and that it was in order as presented.

**Motion by Mr. LeBlanc, seconded by Mr. West to approve the Benefits Report as presented.**

**No discussion and no objections.**

**Motion passed by those members present.**

The next item on the agenda was Item 4, DROP Notifications Report, and it was noted that this report was provided for informational purposes only, and no action was necessary.

The chairman then moved to Item 5, Consultants' Reports, and recognized Ms. Akers for her legal update report. Ms. Akers stated that she believed she could cover the report of ongoing securities litigations without the need for executive session. She noted that information that had been revised since the prior report was highlighted in yellow. She noted the first item on the legal update as the litigation against Macrogenics in which the amended complaint was filed timely, with a few additional complaints. She noted the upcoming key dates for the defendants and plaintiff to file further motions and responses. Regarding the Greensky litigation, Ms. Akers noted that there had been a second mediation with no resolution, so the discovery process was continuing. In the Impinj case, there was an agreed upon settlement which is a long process to complete. She stated that the next action on this case would occur on November 19<sup>th</sup>, and that the process of contacting all the class members would be ongoing for a while. The Energy Transfer defendants had filed a motion to dismiss, and CPERS' attorneys had filed an opposition to that motion. The courts granted the defendant an extension on the motion to dismiss. In the Merit Medical case, the attorneys for CPERS filed their opposition to the motion to dismiss timely. There is currently no hearing date set.

The next item was Item 6, Committee Reports, and under Item 6B, Investment Committee

Reports, the chairman called on Mr. LeBlanc for his report. Mr. LeBlanc stated that the Investment Committee met on October 15<sup>th</sup> to discuss with AndCo the reallocation of the portfolio with an additional real estate allocation (core-plus). With the tentative state of the economy, the committee members were hesitant to move forward too quickly with this allocation. The real estate firms of Brookfield and Principal presented their products; Brookfield Premier Real Estate Partners, and Principal Enhanced Property Fund. Mr. LeBlanc gave a brief overview of the strategy of both firms. After hearing the presentations, the committee agreed to speak again with AndCo about it when they come to present the 3<sup>rd</sup> quarter performance results on November 9<sup>th</sup>. This would give some time to reevaluate following the national election, which should provide a clearer picture for the economy. Mr. LeBlanc stated that although the addition of real estate seemed like a sound investment, he had reservations about the demand for office space with more employees working from home. He noted that the current real estate core manager had not had a good quarter, and there were many unknowns in the next quarter. Mr. West echoed Mr. LeBlanc's remarks and noted that several of the real estate sectors are doing poorly, and that putting \$50 million additional in the asset class at this time was not an easy decision. Mr. Toups noted that the committee discussed possibly waiting until sometime in 2021 to commit to the allocation, depending on the outlook for the real estate market. He also noted that another study from AndCo may be needed to identify an alternative investment that can provide steady returns to the System.

Moving to Item 7, Staff Reports, the chairman noted that under Item 7C, there were invoices from the law offices of Akers & Wisbar, LLC, and called for a motion.

**Motion by Mr. LeBlanc, seconded by Mr. Toups to approve payment for the charges to the law firm of Akers & Wisbar, LLC as presented.**

**No discussion and no objections.**

**Motion passed by those members present.**

Under 7E, there were invoices from the actuarial firm of Foster & Foster. Mr. West requested that the Board be sent the actuarial study report as soon as it is received. The chairman then called for a motion.

**Motion by Mr. Toups, seconded by Mr. Bernard to approve payment for the charges to the actuarial firm of Foster & Foster as presented.**

**No discussion and no objections.**

**Motion passed by those members present.**

Under 7F, there were a number of investment manager/consultant invoices for the Board's review.

Under 7G, Cash Activity Report, Mr. Smith presented the report and noted that there was nothing significant to point out. He also noted the budget report to supplement the information.

Under Item 8, Unfinished Business, there were no items to address.

Under Item 9, New Business, the chairman introduced Item 9A, Consideration of Payment for Disability Medical Charges Not Covered in the Contract Provisions, and called on Mr. Yates for his comments. Mr. Yates stated that this issue was related to the earlier disability application. He stated that the medical consultant's contract called for a charge of \$350 for a disability exam, and that the charge for Mr. Herring had been billed at \$750. The explanation given by Dr. Scimeca to Mr. Yates was that the volume of documents he had to review was unusually high, and that he had to request and accumulate the medical documents himself, as opposed to other retirement systems which gather all the documents to furnish to him for evaluation. Ms. Akers stated that it was within the Board's authority to decide whether or not to pay the additional charges. The chairman noted that the doctor did not perform an in-person examination in this case. Mr. LeBlanc stated that some cases probably take a short time, versus the longer reviews which should balance out overall.

**Motion by Mr. LeBlanc, seconded by Mr. West to deny payment for the charges above the fees as stated in the contract.**

**No discussion and no objections.**

**Motion passed by those members present.**

Under Item 10, Administrative Matters, Mr. Toups recommended that the disability portion of the Retirement Ordinances be referred to the Administrative and Benefits Committee for review. There was a brief discussion regarding who would serve on the A&B Committee, and it was agreed that Mr. Bernard, Sgt. Noel, and Mr. Hines would comprise the A&B Committee.

The chairman then continued with Item 11, Police Guarantee Trust Matters, and under Item 11A, PGT Benefits Report, recognized Mr. Yates who stated that the report contained several items and was in order as presented.

**Motion by Mr. West, seconded by Mr. Bernard to approve the PGT Benefits Report as presented.**

**No discussion and no objections.**

**Motion passed by those members present.**

Under Item 11B, the chairman noted that the PGT DROP Notifications Report was provided for the Board's information, and that no action was required.

Item 11C, Consultants' Reports, there were no items to address.

There were a number of investment manager invoices under Item 11D.1 for the Board's review.

Under Item 11D.2 there were no invoices to address.

Under Item 11D.3, PGT Cash Activity Report, Mr. Smith presented the report and noted that there was nothing unusual to point out this month.

Under Item 11E.1, there were no items.

Under Items 11F Unfinished Business, and 11G, there were no matters to address.

Seeing no further items on the agenda, the chairman called for a motion to adjourn.

**Motion by Mr. West, seconded by Mr. Bernard to adjourn at 11:05 a.m.**

**No discussion and no objections.**

**Motion passed by those members present.**

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**MARSHA HANLON**  
**CHAIRMAN, RETIREMENT BOARD OF TRUSTEES**

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**JEFFREY R. YATES**  
**RETIREMENT ADMINISTRATOR**